

Page 1

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2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555 (JMP)

8 HOLDINGS, INC., et al, (Jointly Administered)

9 Debtors.

10 -----x

11

12 * * *HIGHLY CONFIDENTIAL* * *

13 DEPOSITION OF IAN LOWITT

14 New York, New York

15 August 20, 2009

16

17 Reported by:

18 MARY F. BOWMAN, RPR, CRR

19 JOB NO. 24043

20

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Page 2

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5 August 20, 2009

6 9:31 a.m.

7

8

9 Deposition of IAN LOWITT, held at
10 the offices of Jones Day, LLP, 222 East 41st
11 Street, New York, New York, before Mary F.
12 Bowman, a Registered Professional Reporter,
13 Certified Realtime Reporter, and Notary Public
14 of the State of New York.

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1 LOWITT - HIGHLY CONFIDENTIAL

2 [REDACTED]
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12 [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 Q. Now, you currently are employed as the
16 chief operating officer of Barclays Wealth
17 Americas; is that correct?

18 A. That is correct.

19 Q. How long have you held that position?

20 A. Since April of this year.

21 Q. And when did you first start work for
22 Barclays?

23 A. I joined Barclays I guess the Monday
24 that the deal closed.

25 Q. That would be September 22nd?

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2 A. I believe that's correct.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] Director

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

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[REDACTED]

12

Q. Did he tell you anything else that you can remember now about that initial contact with Barclays and Lehman?

13

A. He also shared with me that there were eight individuals that Barclays deemed as critical to the transaction, and that I was one of those eight individuals.

14

Q. Who were the other seven?

15

A. The other seven, to the best of my recollection, was Mike Gelband, Eric Felder, Ajay Nagpal, Tom Humphrey, Hyung Lee, myself.

16

Q. Is Skip McGee the last one?

17

A. Skip McGee. And I -- Bart indicated to me that he was not going to be part of that

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2 group of eight.

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Did there come a time when you began
15 to discuss with Barclays the terms and conditions
16 upon which you would be employed at Barclays after
17 the transaction?

18 A. I met with Rich Richie at some point
19 on early Tuesday morning.

20 Q. And tell me about your meeting with
21 Mr. Richie. What did you say? What did he say?

22 A. To the best of my recollection, he
23 indicated that they wanted me to be part of the
24 transaction, that having me be part of their
25 organization was important. [REDACTED]

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1 LOWITT - HIGHLY CONFIDENTIAL

2 [REDACTED]
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25 [REDACTED]

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1 LOWITT - HIGHLY CONFIDENTIAL

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11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Q. Did you at some point enter into a
22 written agreement with Barclays concerning the
23 terms and conditions of your employment by
24 Barclays?

25 A. I did.

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1 LOWITT - HIGHLY CONFIDENTIAL

2 Q. About when did you do that?

3 A. I think I did that on the Thursday
4 evening.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 LOWITT - HIGHLY CONFIDENTIAL

2 [REDACTED]
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7 [REDACTED] S
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 Q. It was your understanding that the
14 seven had to sign their contracts before the
15 transaction closed?

16 A. That it was a condition of closing,
17 was at least my understanding.

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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Q. Mr. Lowitt, I have put before you what

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1 LOWITT - HIGHLY CONFIDENTIAL

2 we have marked as Exhibit 216. Do you recognize
3 the document?

4 A. I do.

5 Q. Is that your employment agreement with
6 Barclays?

7 A. I don't know if it is an employment
8 agreement. It is certainly the offer that I got
9 from Barclays that I signed on the 18th that we
10 talked about. I guess I'm just not sure what
11 employment contract means, but yes, it is the
12 agreement that I signed with Barclays.

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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Q. Do you know if what was agreed to between the parties in their negotiating session with regard to this difference between the amount shown on the books and the price paid was an agreement in terms of a percentage of what was shown in the amount of the books or a raw number?

14

A. My recollection is that it was a number, not a percentage.

16

Q. What was the number?

17

A. My recollection is it was \$5 billion.

18



19



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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

[REDACTED]

15

[REDACTED].

16

Q. And the difference between the amount
of the repo and the cash proceeds was
approximately \$5 billion, correct?

19

MR. HUME: Objection, lacks
foundation.

21

A. It, it -- I mean it was in that
region.

23

[REDACTED]

24

[REDACTED]

25

[REDACTED]

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2 [REDACTED]

3 Q. And what, as best you recall, is the
4 value of those additional elements, dollar value?

5 A. The dollar value of the unencumbered
6 collateral was in and around \$2 billion, and, you
7 know, the 15c3 excess, my understanding of the
8 deal that was reached vis-a-vis the 15c3 excess
9 was around 750 to 800 million dollars.

10 [REDACTED] t

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] y

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 LOWITT - HIGHLY CONFIDENTIAL

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Q. As best you remember, what did

9 Mr. McDade say to you about finding additional
10 sources of value?

11 A. I don't have a specific recollection
12 of the conversation, but I would -- I would expect
13 that he would have asked me where, if anywhere,
14 were there additional sources of value we could
15 include in a new transaction.

16 Q. Did Mr. McDade give you a target
17 number for additional sources of value? How much
18 he needed to find?

19 A. My recollection is between 3 and 4
20 billion dollars.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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1 LOWITT - HIGHLY CONFIDENTIAL

2 [REDACTED]
3 [REDACTED]
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5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Q. The 15c3 lock-up piece, let me be sure
22 I understand what you just said. As I understand
23 it, the reason it takes place over a period of
24 time is as trades settle and customer activity
25 takes place, you are able to realize how much is

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² surplus in 15c3, correct?

3 A. I don't know if it's so much trade
4 settling, but 15c3 lock-up is sort of a regulatory
5 requirement which establishes a set of rules
6 which, based on customer assets and how they are
7 custodiated, determines an amount of excess that you
8 need to hold against that.

9 And it is only in sort of the unwind
10 of all of those customer positions that you can
11 determine whether there is excess as calculated
12 per the formula or whether the actual excess is a
13 different number.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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LOWITT - HIGHLY CONFIDENTIAL

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

Q. Do you know when during the week it was determined that that's how the repo would be resolved, that Barclays would keep the collateral and Lehman would keep the cash?

15

A. It was definitely part of -- I wasn't party to the negotiating sessions, but it was definitely part of the discussions that were occurring on the Friday.

22

[REDACTED]

23

[REDACTED]

24

[REDACTED]

25

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

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[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

[REDACTED]

18

[REDACTED]

19

[REDACTED]

20

[REDACTED]

21

[REDACTED]

22

Q. And then two, "Non-actionable box as

23

shown to Barclays on Friday afternoon (1.9 billion

24

of collateral). Actual box is slightly bigger

25

because it also contains Lehman debt."

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2 Do you see that?

3 A. I do.

4 Q. And do you recognize this to be two of
5 the components of the value that was ultimately
6 transferred to Barclays in the transaction?

7 A. I see this as two of the elements of
8 the transaction, the repo transaction and the
9 non-actionable box, which I think is shorthand for
10 or just a different term for the unencumbered
11 collateral.

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

Did you ever develop an understanding
as to whether a \$2 billion accrual for comp was a
good estimate?

10

A. My understanding of the 2 billion was
that it was a negotiated number between Barclays
and Lehman, that it included the cash bonus, as
well as sort of stock and other forms of
compensation.

15

So the fact that it was a \$2 billion
number which was larger than the sort of accrual
for cash bonus didn't surprise me.

18

Q. Is the effect of that enlargement of
the number over the accrual for -- accrual for a
cash bonus, to increase the consideration Barclays
is shown to pay by assuming liabilities?

22

A. I don't see it in that way. I see it
as an agreement that \$2 billion of compensation in
the form of cash bonus and stock would be
available for Lehman employees.